

AMENDED IN ASSEMBLY APRIL 14, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1158

Introduced by Assembly Member Lieber

February 22, 2005

An act to amend Section 425.16 of the Code of Civil Procedure, relating to civil actions.

LEGISLATIVE COUNSEL'S DIGEST

AB 1158, as amended, Lieber. Civil procedure.

(1) Existing law provides that a cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue, as specified, shall be subject to a special motion to strike, unless the court, after considering the pleadings and supporting and opposing affidavits, determines that there is a probability that the plaintiff will prevail on the claim.

This bill would provide that the denial of a defendant's special motion to strike or other dispositive motion by the trial court or *the affirmance of the trial court's denial of the motion* by an intermediate appellate court shall not ~~be deemed to be~~ constitute probable cause for bringing or maintaining the cause of action challenged by the motion if the defendant ~~eventually~~ *ultimately* prevails *with respect to that cause of action*.

(2) Existing law exempts from the above provisions any enforcement action brought in the name of the people of the State of California by the Attorney General, district attorney, or city attorney, acting as a public prosecutor.

This bill would also exempt *malicious prosecution claims* or any *other* cause of action arising from ~~a~~ *the assertion of a prior* cause of

action that has been dismissed pursuant to a special motion to strike, and would provide that if any trial court denies a special motion to strike on the grounds that the action or cause of action is exempt, specified appeal provisions do not apply to that cause of action.

(3) Existing law provides that a special motion pursuant to the above provisions may be filed within 60 days of service of the complaint or, in the court's discretion, at any later time upon terms it deems proper. Existing law also specifies that the motion shall be noticed for hearing not more than 30 days after service unless the docket conditions of the court require a later hearing.

This bill would revise those provisions to specify that a special motion may be filed within 60 days of the service of the complaint or, in the court's discretion, at any later time upon terms it deems proper to achieve the intent of encouraging continued participation in matters of public significance, as specified. The bill would also require that the motion be scheduled by the clerk of the court no more than 30 days after the filing of the motion unless the docket conditions of the court require a later date or the defendant requests one. Additionally, the bill would permit any affected party to seek an earlier hearing date by ex parte application, as specified.

(4) Existing law provides that an order granting or denying a special motion pursuant to the above provisions is appealable.

This bill would specify that on appeal, a party's evidentiary objections in the trial court shall not be deemed waived on the ground that the trial court failed to rule on them.

The bill would declare the Legislature's intent with respect to certain provisions of the bill.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 425.16 of the Code of Civil Procedure
- 2 is amended to read:
- 3 425.16. (a) The Legislature finds and declares that there has
- 4 been a disturbing increase in lawsuits brought primarily to chill
- 5 the valid exercise of the constitutional rights of freedom of
- 6 speech and petition for the redress of grievances. The Legislature
- 7 finds and declares that it is in the public interest to encourage
- 8 continued participation in matters of public significance, and that

1 this participation should not be chilled through abuse of the
2 judicial process. To this end, this section shall be construed
3 broadly.

4 (b) (1) A cause of action against a person arising from any act
5 of that person in furtherance of the person's right of petition or
6 free speech under the United States or California Constitution in
7 connection with a public issue shall be subject to a special
8 motion to strike, unless the court determines that the plaintiff has
9 established that there is a probability that the plaintiff will prevail
10 on the claim.

11 (2) In making its determination, the court shall consider the
12 pleadings, and supporting and opposing affidavits stating the
13 facts upon which the liability or defense is based.

14 (3) If the court determines that the plaintiff has established a
15 probability that he or she will prevail on the claim, neither that
16 determination nor the fact of that determination shall be
17 admissible in evidence at any later stage of the case, and no
18 burden of proof or degree of proof otherwise applicable shall be
19 affected by that determination.

20 (4) The denial of a defendant's special motion to strike or
21 other dispositive motion by the trial court or *the affirmance of the*
22 *trial court's denial of the motion* by an intermediate appellate
23 court shall not ~~be deemed to be~~ *constitute* probable cause for
24 bringing or maintaining the cause of action challenged by the
25 motion if the defendant ~~eventually~~ *ultimately* prevails under this
26 section *with respect to that cause of action*.

27 (c) In any action subject to subdivision (b), a prevailing
28 defendant on a special motion to strike shall be entitled to
29 recover his or her attorney's fees and costs. If the court finds that
30 a special motion to strike is frivolous or is solely intended to
31 cause unnecessary delay, the court shall award costs and
32 reasonable attorney's fees to a plaintiff prevailing on the motion,
33 pursuant to Section 128.5.

34 (d) (1) This section shall not apply to any enforcement action
35 brought in the name of the people of the State of California by
36 the Attorney General, district attorney, or city attorney, acting as
37 a public prosecutor.

38 (2) This section shall not apply to ~~any~~ *malicious prosecution*
39 *claims or any other* cause of action arising from ~~any~~ *the assertion*

1 *of a prior cause of action which that* has been dismissed pursuant
2 to a special motion to strike under this section.

3 (3) If any trial court denies a special motion to strike on the
4 grounds that the action or cause of action is exempt pursuant to
5 this subdivision, the appeal provisions in subdivision (j) of this
6 section and paragraph (13) of subdivision (a) of Section 904.1 do
7 not apply to that action or cause of action.

8 (e) As used in this section, “act in furtherance of a person’s
9 right of petition or free speech under the United States or
10 California Constitution in connection with a public issue”
11 includes: (1) any written or oral statement or writing made before
12 a legislative, executive, or judicial proceeding, or any other
13 official proceeding authorized by law; (2) any written or oral
14 statement or writing made in connection with an issue under
15 consideration or review by a legislative, executive, or judicial
16 body, or any other official proceeding authorized by law; (3) any
17 written or oral statement or writing made in a place open to the
18 public or a public forum in connection with an issue of public
19 interest; (4) or any other conduct in furtherance of the exercise of
20 the constitutional right of petition or the constitutional right of
21 free speech in connection with a public issue or an issue of public
22 interest.

23 (f) The special motion may be filed within 60 days of the
24 service of the complaint or, in the court’s discretion, at any later
25 time upon terms it deems proper *to achieve the intent of*
26 *subdivision (a).* The motion shall be ~~noticed for~~ *scheduled by the*
27 *clerk of the court for a hearing not more than 30 days after*
28 ~~service the filing of the motion~~ unless the docket conditions of the
29 court require a later hearing *or the defendant requests one. Any*
30 *affected party may seek an earlier hearing date by ex parte*
31 *application, which shall be granted for good cause shown.*

32 (g) All discovery proceedings in the action shall be stayed
33 upon the filing of a notice of motion made pursuant to this
34 section. The stay of discovery shall remain in effect until notice
35 of entry of the order ruling on the motion. The court, on noticed
36 motion and for good cause shown, may order that specified
37 discovery be conducted notwithstanding this subdivision.

38 (h) For purposes of this section, “complaint” includes
39 “cross-complaint” and “petition,” “plaintiff” includes

1 “cross-complainant” and “petitioner,” and “defendant” includes
2 “cross-defendant” and “respondent.”

3 ~~(i) On or before January 1, 1998, the Judicial Council shall~~
4 ~~report to the Legislature on the frequency and outcome of special~~
5 ~~motions made pursuant to this section, and on any other matters~~
6 ~~pertinent to the purposes of this section.~~

7 ~~(j)~~

8 (i) An order granting or denying a special motion to strike
9 shall be appealable under Section 904.1.

10 (j) *On appeal, a party’s timely evidentiary objections in the*
11 *trial court shall not be deemed waived on the ground that the*
12 *trial court failed to rule on them.*

13 (k) (1) Any party who files a special motion to strike pursuant
14 to this section, and any party who files an opposition to a special
15 motion to strike, shall, promptly upon so filing, transmit to the
16 Judicial Council, by e-mail or fax, a copy of the endorsed-filed
17 caption page of the motion or opposition, a copy of any related
18 notice of appeal or petition for a writ, and a conformed copy of
19 any order issued pursuant to this section, including any order
20 granting or denying a special motion to strike, discovery, or fees.

21 (2) The Judicial Council shall maintain a public record of
22 information transmitted pursuant to this subdivision for at least
23 three years, and may store the information on microfilm or other
24 appropriate electronic media.

25 *SEC. 2. It is the intent of the Legislature, in adding*
26 *paragraph (2) to subdivision (d) of Section 425.16 of the Code of*
27 *Civil Procedure, to overrule the decision in Soukup v. Stock*
28 *(2004) 118 Cal.App.4th 1490, petition for review granted*
29 *10/20/04, S126864. It is further the intent of the Legislature, in*
30 *adding paragraph (4) to subdivision (b) of Section 425.16 of the*
31 *Code of Civil Procedure, to overrule the decision in Wilson v.*
32 *Parker, Covert & Chidester (2002) 28 Cal.4th 811. These*
33 *decisions misconstrue Section 425.16 of the Code of Civil*
34 *Procedure by interpreting it in a way that does not protect*
35 *SLAPP targets. Malicious prosecution actions are generally*
36 *disfavored because of the danger that they may chill petition and*
37 *speech activity (Sheldon Appel Co. v. Albert & Oliker (1989) 47*
38 *Cal.3d 863, 872-874). However, a SLAPPback suit (malicious*
39 *prosecution and related claims arising from the dismissal of a*

1 *SLAPP suit) should instead be a favored action, because it*
2 *further petition and speech rights.*

3 *It is also the intent of the Legislature, in amending subdivision*
4 *(f) of Section 425.16 of the Code of Civil Procedure, to overrule*
5 *the decisions in Decker v. U.D. Registry, Inc. (2003) 105*
6 *Cal.App.4th 1382, 1387-1390, and Fair Political Practices*
7 *Commission v. American Civil Rights Coalition, Inc. (2004) 121*
8 *Cal.App.4th 1171, 1174-1178, and to apply this amendment to*
9 *cases pending at the time this act is adopted.*

10 *In amending subdivision (i) of Section 425.16 of the Code of*
11 *Civil Procedure, it is the intent of the Legislature to overrule the*
12 *decisions of HMS Capital, Inc. v. Lawyers Title Co. (2004) 118*
13 *Cal.App.4th 204, 219, and Slauson Partnership v. Ochoa (2003)*
14 *112 Cal.App.4th 1005, 1014, fn. 4, and to apply this amendment*
15 *to cases pending at the time this act is adopted.*